

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ENGELBRECHT, B.

Plaintiff,

v.

COUNTY OF PLACER; PLACER
COUNTY SHERIFF'S DEPARTMENT;
WAYNE WOO, PLACER COUNTY JAIL
SUPERVISOR JEFF SWEARINGEN,
N.P., PLACER COUNTY PRE-TRIAL
PROBATION SUPERVISOR DAVID
KEENAN, WELLPATH, and TYLER
SOGA, NURSE PRACTITIONER,
PLACER COUNTY JAIL INFIRMARY,
only in their official
capacities, and DOES 1
through 100, in their
individual and official
capacities,

Defendants.

No. 2:23-cv-00286-JAM-CKD

**ORDER GRANTING DEFENDANTS'
COUNTY OF PLACER AND PLACER
COUNTY SHERIFF'S DEPARTMENT'S
12(b)6 MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT
WITH PREJUDICE**

This matter is before the Court on Defendants County of
Placer and Placer County Sheriff's Department's (collectively,
"Defendants") motion to dismiss Plaintiff B Engelbrecht's
("Plaintiff") Amended Complaint ("Amended Complaint"). Mot. to

Dismiss ("Mot."), ECF No. 22. Plaintiff's Amended Complaint alleges three claims under 42 U.S.C. section 1983 against Defendants for unconstitutional medical care provided to Plaintiff. See Am. Compl., ECF No. 18. For the reasons set forth below, the Court GRANTS Defendants' motion to dismiss with prejudice.¹

I. FACTUAL ALLEGATIONS

Since 2000, Plaintiff has had a variety of health complications and rare diseases for which she received bi-weekly intravenous infusions. Am. Compl. ¶¶ 7, 9, 11, 37. In 2017, Plaintiff relocated to Texas where she continued to receive bi-weekly infusions. Id. at ¶ 37.

Plaintiff was criminally charged in Placer County, California and extradited from Texas to California on January 17, 2022. Id. at ¶¶ 3, 40. Plaintiff exhibited health concerns when she arrived at Placer County Jail and was re-routed to a nearby emergency room before being placed in custody. Id. ¶¶ 41, 42. An ankle monitor was placed on Plaintiff that evening. Id. ¶ 43. The following day, Defendant Tyler Soga ("Soga"), a nurse practitioner for the Auburn Jail, examined Plaintiff and provided medical care. Id. at ¶¶ 33, 51. Plaintiff informed Defendant Soga of her unique medical condition and requirements for infusion treatments at that time. Id. at ¶ 33.

///

¹This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for August 1, 2023.

1 After several court appearances and having contracted COVID-
2 19, Plaintiff was ultimately released from custody on
3 February 17, 2022, provided she: (1) remain in the Sacramento-
4 Roseville area pending her criminal matter; and (2) wear an ankle
5 monitor. Id. at ¶¶ 45-46. Plaintiff requested she be provided
6 the bi-weekly infusion treatment while in custody and at each
7 court appearance before her conditional release. Id. at ¶ 46.

8 Plaintiff was allowed to return to Texas following a bail
9 review on March 8, 2022, on the condition she remain subject to
10 ankle monitoring. Id. at ¶¶ 47-48. On April 19, 2022, Placer
11 County Probation removed Plaintiff's ankle monitor, and she
12 resumed her bi-weekly infusion treatments in Texas. Id. at
13 ¶¶ 48, 59, 71, 74.

14 Plaintiff asserts the bi-weekly infusion treatments she
15 received in McKinney, Texas could not be replicated in a timely
16 manner in another location without putting her life at risk. Id.
17 at ¶ 42. Accordingly, Plaintiff claims Defendants' failure to
18 secure her release from custody and prompt return to Texas was
19 unconstitutional. Id. at ¶¶ 42, 49, 52, 59, 71. Plaintiff
20 alleges Defendants' actions and omissions caused her harm that
21 amounted to an intentional deprivation and deliberate
22 indifference towards Plaintiff's constitutional right to medical
23 care. Id.

24 Defendants, collectively, now move to dismiss Plaintiff's
25 Amended Complaint. See Mot. Plaintiff opposes the motion,
26 Opp'n, ECF No. 26, and Defendants replied. Reply, ECF No. 27.

27 ///

28 ///

II. OPINION

A. Legal Standard

Dismissal is appropriate under Rule 12(b)(6) of the Federal Rules of Civil Procedure when a plaintiff's allegations fail "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss [under 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotation marks and citation omitted). While "detailed factual allegations" are unnecessary, the complaint must allege more than "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." Id. In considering a motion to dismiss for failure to state a claim, the court generally accepts as true the allegations in the complaint, construes the pleading in the light most favorable to the party opposing the motion, and resolves all doubts in the pleader's favor. Lazy Y Ranch LTD. v. Behrens, 546 F.3d 580, 588 (9th Cir. 2008). "In sum, for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009).

B. Analysis1. Plaintiff Fails to Adequately Plead Monell Claims

Plaintiff asserts three claims under 42 U.S.C. section 1983 against Defendants. See Am. Compl. The first two claims arise from alleged violations of the Eighth Amendment of the U.S.

1 Constitution, while the third claim is for intentional and
2 malicious infliction of emotional distress based on the harm
3 Plaintiff allegedly suffered as alleged in the first two claims.
4 Id. Defendants move to dismiss all three claims on the ground
5 that Plaintiff fails to state a claim for relief under 42 U.S.C.
6 section 1983 because Plaintiff has not alleged, and cannot
7 allege, that there was a custom, policy, or practice which was a
8 moving force behind the alleged constitutional violations under
9 Monell. Mot. at 4.

10 Municipalities and local governments may be held liable
11 under section 1983 for constitutional injuries inflicted through
12 a policy or custom. Monell v. Dep't of Soc. Servs. of City of
13 New York, 436 U.S. 658, 694 (1978). "A policy is a deliberate
14 choice to follow a course of action made from among various
15 alternatives by the official or officials responsible for
16 establishing final policy with respect to the subject matter in
17 question." Tsao v. Desert Palace, Inc., 698 F.3d 1128, 1143
18 (9th Cir. 2012) (internal quotation marks and citation omitted).
19 "In addition, a local governmental entity may be liable if it
20 has a policy of inaction and such inaction amounts to a failure
21 to protect constitutional rights." Lee v. City of Los Angeles,
22 250 F.3d 668, 681 (9th Cir. 2001) (quoting Oviatt v. Pearce, 954
23 F.2d 1470, 1474 (9th Cir. 1992) (internal quotation marks and
24 citation omitted). To assert a Monell claim, a plaintiff must
25 show: (1) they were deprived of a constitutional right; (2) the
26 defendant had a policy or custom; (3) the policy or custom
27 amounted to deliberate indifference to the plaintiff's
28 constitutional right; and (4) the policy or custom was the

1 moving force behind the constitutional violation. Dougherty v.
2 City of Covina, 654 F.3d 892, 900 (9th Cir. 2011); Mabe v. San
3 Bernardino Cty., 237 F.3d 1101, 1110-11 (9th Cir. 2001).

4 While Monell claims are not subject to the heightened
5 pleading standard under Rule 9(b) of the Federal Rules of Civil
6 Procedure, Leatherman v. Tarrant Cnty. Narcotics Intel. &
7 Coordination Unit, 507 U.S. 163, 168 (1993), they “may not
8 simply recite the elements of a cause of action, but must
9 contain sufficient allegations of underlying facts to give fair
10 notice and to enable the opposing party to defend itself
11 effectively.” AE ex rel. Hernandez v. Cty. of Tulare, 666 F.3d
12 631, 637 (9th Cir. 2012) (internal quotation marks and citation
13 omitted). “[T]he factual allegations [. . .] taken as true must
14 plausibly suggest an entitlement to relief, such that it is not
15 unfair to require the opposing part to be subject to the expense
16 of discovery and continued litigation.” Id.

17 Here, Plaintiff does not adequately allege a custom or
18 policy that was the moving force behind Plaintiff’s alleged
19 constitutional violations. Aside from an alleged single
20 incident of unconstitutional activity, Plaintiff does not
21 identify another instance where Defendants failed to treat her
22 rare disease. The absence of these necessary allegations causes
23 her claims to fail. Gillette v. Delmore, 979 F.2d 1342, 1347
24 (9th Cir. 1992); see also Trevino v. Gates, 99 F.3d 911, 918
25 (9th Cir. 1996) (“Liability for improper custom may not be
26 predicated on isolated or sporadic incidents; it must be founded
27 upon practices of sufficient duration, frequency and consistency
28 that the conduct has become a traditional method of carrying out

1 policy.").

2 Although Plaintiff uses Monell buzzwords in her Amended
3 Complaint, she does not provide the necessary factual support as
4 to the policies, practices, customs, or usages to which she is
5 referring. Plaintiff also fails to provide any additional
6 information in her opposition as to how she could possibly cure
7 the deficiencies in her Amended Complaint. See Am. Compl. ¶¶ 4,
8 13, 17; Opp'n at 5, 9. (Generally, conclusory allegations
9 without any underlying facts to support them are insufficient.
10 See Starr, 652 F.3d at 1216.) In fact, Plaintiff concedes she
11 is unaware of whether Defendants' actions or omissions were
12 attributable to any custom or policy, or to some other reason.
13 See Opp'n at 9 ("It is not known at this early stage if [actors
14 within the scope and ambit of Placer County activities were
15 deliberately indifferent] because they were intimidated by
16 Superior Court Judge Gazzaniga's constant minimization, if not
17 disdain, for providing the appropriate care of the Plaintiff, or
18 for some other reason. That is the purpose of formal
19 discovery.").

20 Plaintiff relies on McGuckin v. Smith, 974 F.2d 1050 (9th
21 Cir. 1992)² and Jett v. Penner, 439 F.3d 1091 (9th Cir. 2006) to
22 support her position that her Monell claims are sufficiently
23 pleaded. Opp'n at 10. Both cases are inapposite here: McGuckin
24 and Jett do not address a *municipality's* liability under section
25 1983, and those cases do not relieve Plaintiff of her obligation
26 to identify in her Amended Complaint the policy or custom which

27 ²McGuckin was overruled by WMX Techs., Inc. v. Miller, 104 F.3d
28 1133 (9th Cir. 1997) on grounds not relevant here.

1 caused the violation of her constitutional rights.

2 Because Plaintiff has failed to allege sufficient *facts*
3 demonstrating a pattern, practice, or custom under Monell,
4 Defendants' motion to dismiss Plaintiff's claims is GRANTED.³

5 2. Defendants' Motion to Dismiss is Granted With
6 Prejudice As Leave to Amend Would Be Futile

7 Granting or denying a request for leave to amend is within
8 the discretion of the District Courts. Foman v. Davis, 371 U.S.
9 178, 182 (1962). While leave to amend a complaint should be
10 freely given, id., "[l]eave need not be granted where the
11 amendment of the complaint . . . constitutes an exercise in
12 futility. . . ." (Ascon Properties, Inc. v. Mobil Oil Co., 866
13 F.2d 1149, 1160 (9th Cir. 1989). Dismissal without leave to
14 amend is proper if it is clear that the complaint could not be
15 saved by any amendment. Intri-Plex Techs., Inc. v. Crest Grp.,
16 Inc., 499 F.3d 1048, 1056 (9th Cir. 2007).

17 Based on the allegations in the Amended Complaint and
18 Plaintiff's opposition, it does not appear that Plaintiff can
19 support—with specific facts and allegations—that Defendants had
20 a custom or policy which caused a constitutional violation in
21 this case. As Defendants note, Plaintiff acknowledges she is

22 ³The Court makes this ruling without considering the propriety of
23 Plaintiff's third claim brought under section 1983, entitled
24 "COUNT THREE—42 U.S.C. § 1983 Intentional and Malicious
25 Infliction of Emotional Distress." Am. Compl. at 21. Regardless
26 of whether this claim can properly be brought under section 1983,
27 Plaintiff has nevertheless failed to allege that a custom or
28 policy was the moving force behind the alleged constitutional
violations. Therefore, this claim fails as a matter of law for
the reason identified in Defendants' motion and is resolved
without further addressing the viability of this claim as
alleged.

1 unaware whether Defendants operated according to a custom or
2 policy that was the moving force behind constitutional
3 violations. See Opp'n at 9 ("At this time, it is not known
4 whether the policy or custom and usage failure to act and care
5 for the Plaintiff with respect to this clearly rare and
6 dangerous disease, occurred within Wellpath, or within the
7 Sheriff's Office, or both."); id. at 5.

8 Even though Plaintiff states that she has discovered "new
9 facts inferring constitutional violations within the ambit of
10 Placer County," Opp'n at 11, she does not reveal what she has
11 discovered, let alone the basis for the inference. More
12 importantly, Plaintiff claims these undisclosed new facts and
13 "revelations" would support the potential liability of those
14 individuals involved in Plaintiff's alleged harm. Notably,
15 Plaintiff does not contend that such facts would also reveal the
16 existence of a longstanding custom or policy of Defendants which
17 was the moving force behind her alleged constitutional
18 violations. Opp'n at 6-7, 11. Plaintiff has twice demonstrated
19 the inability to sufficiently plead a Monell claim. She is not
20 entitled to a third attempt.⁴

21 ///

22 ///

23
24 ⁴The Court does not construe Plaintiff's opposition to the motion
25 to dismiss as a request for leave to file a Second Amended
26 Complaint, given Plaintiff's stated intention to file a separate
27 motion for leave in the future. Opp'n at 11. To the extent
28 Plaintiff does seek leave to amend the Amended Complaint within
her opposition, the Court will not consider the request because
it is improperly made. Local Rule 137(c).

1 The Court finds that further amendment would be an exercise
2 in futility, Ascon Properties, Inc., 866 F.2d at 1160, and
3 therefore GRANTS Defendants' motion to dismiss all three claims
4 WITH PREJUDICE.

5
6 III. ORDER

7 For the reasons set forth above, Defendants' County of
8 Placer and Placer County Sheriff's Department's motion to dismiss
9 is GRANTED WITH PREJUDICE.

10 IT IS SO ORDERED.

11 Dated: September 20, 2023

12
13 
14 JOHN A. MENDEZ
15 SENIOR UNITED STATES DISTRICT JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28